

[NOT SCHEDULED FOR ORAL ARGUMENT]

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

FAYEZ AL KANDARI,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA, *et al.*,

Respondents-Appellees.

No. 15-5268

**UNOPPOSED MOTION TO DISMISS APPEAL AS MOOT AND
VACATE DISTRICT COURT'S OPINION AND ORDER**

Petitioner Fayez Al Kandari is a citizen of Kuwait who until a few days ago was detained by Respondents at the United States Naval Base at Guantanamo Bay ("Guantanamo"). On August 31, 2015, the district court (Kollar-Kotelly, J) issued an Order and Classified Memorandum Opinion that (i) denied Petitioner's Petition for Writ of Habeas Corpus, (ii) granted Respondents' Response to Petition for Writ of Habeas Corpus and Motion to Dismiss or for Judgment as a Matter of Law, and (iii) dismissed the action without prejudice. While this appeal was pending, on January 8, 2016, Respondents transferred Mr. Al Kandari

to his home country of Kuwait. Accordingly, Petitioner moves to dismiss this appeal as moot, and for an order vacating the district court's Order and Classified Memorandum Opinion¹ of August 31, 2015. Respondents have advised undersigned counsel that, in light of the circumstances of this case, Respondents do not oppose this motion.

The grounds for this motion are as follows:

1. On March 6, 2015, Petitioner filed a Petition for Writ of Habeas Corpus seeking a ruling that he was entitled to release from incarceration at Guantanamo and repatriation to his home country of Kuwait in light of Respondent Obama's repeated declarations that combat operations in Afghanistan are over thereby making Petitioner's continued detention under the Law of Armed Conflict, the United States Constitution, and the Authorization of Use of Military Force ("AUMF"), Pub. L. 107-40, 115 Stat. 224 (2001) unjustified. Respondents filed a Response to Petition for Writ of Habeas Corpus and Motion to Dismiss or for Judgment as a Matter of Law on May 8, 2015. On August 31, 2015, the district court granted Respondents' Response for Writ of Habeas corpus and Motion to Dismiss or for Judgment as a

¹ A public and redacted version of the Classified Memorandum Opinion was issued by the district court on the same day.

Matter of Law and denied Petitioner's Petition for Writ of Habeas Corpus. The district court issued a Classified Memorandum Opinion setting forth its reasoning, and separately a one-page Order announcing its judgment. Petitioner timely appealed from the district court's decision.

2. On January 8, 2016, the United States transferred Mr. Al Kandari to the custody of the Government of Kuwait. Because of this change in circumstances, this appeal has become moot. For that reason, Petitioner requests that the Court vacate the district court's August 31, 2015 Classified Memorandum Opinion and Order. *See U.S. Bancorp Mortg. Co. v. Bonner Mall Partnership*, 513 U.S. 18, 25 (1994); *United States v. Munsingwear*, 340 U.S. 36 (1950); *American Bar Ass'n v. FTC*, 636 F.3d 641, 648-49 (D.C. Cir. 2011); *Clarke v. United States*, 915 F.2d 699, 706 (D.C. Cir. 1990) (en banc); *National Black Police Ass'n v. District of Columbia*, 108 F.3d 346, 354 (D.C. Cir. 1997). For the same reason, Petitioner requests that the Court simultaneously dismiss as moot this pending appeal, with each party to bear its own costs, if any.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court vacate the district court's August 31, 2015 Classified Memorandum Opinion and Order and dismiss this pending appeal as moot.

Respectfully submitted,

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